UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,695	01/11/2006	Kyoko Inao	KYOKA -2-PCT/Minori	2226

156 7590 03/05/2009

Kirschstein, Israel, Schiffmiller & Pieroni, P.C.
425 FIFTH AVENUE
5TH FLOOR
NEW YORK, NY 10016-2223

EXAMINER	
SCHLIENTZ, NATHAN W	

ART UNIT	PAPER NUMBER
1616	

MAIL DATE	DELIVERY MODE
03/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/564,695	INAO, KYOKO	
	Examiner	Art Unit	
	Nathan W. Schlientz	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *18-25* is/are pending in the application.

4a) Of the above claim(s) *24 and 25* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *18-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, claims 18-23, during the telephone conversation on 8 May 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement in the reply filed on 20 November 2008, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Status of Claims

Claims 18-25 are pending in the present application. Claims 24 and 25 are withdrawn from further consideration as being drawn to a non-elected invention. As a result, claims 18-23 are examined herein on the merits for patentability. No claim is allowed at this time.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujii (JP 2001-233702 A; machine-generated English language translation referred to herein).

Fujii discloses immersing a plant body in a preservation solution comprising polyhydric alcohol, a lower alcohol and a dye to allow the polyhydric alcohol to be taken into and absorbed in the plant body tissue replacing the water within the plant body tissue, followed by removing the lower alcohol (Abstract). Fujii discloses that the polyhydric alcohol is chosen from glycerol, ethylene glycol, propylene glycol, 1,3-butylene glycol, sorbitol, and diethylene glycol ([0004] and [0008]), and the lower alcohol is chosen from ethyl alcohol, methyl alcohol, butyl alcohol and isopropyl alcohol

Response to Arguments

Applicants argue on page 2 that Fuji does not disclose any use of a glycol ether. However, the examiner respectfully argues that diethylene glycol is an ether of ethylene glycol.

Applicants further argue on pages 2-3 that the instant claims are not obvious, and thus have novelty and an inventive step, as evidenced by the International Search Report. However, the examiner respectfully argues that the patentability of US Patent Applications is considered independently from the International Search Report.

2. Claims 18-21 and 23 rejected under 35 U.S.C. 102(a) as being anticipated by Sakamoto (JP 2004-099605 A; machine-generated English language translation referred to herein).

Sakamoto discloses a method for preserving cut flowers comprising soaking the flower in a solution comprising a mixture of polyvalent alcohol and an alcohol to substitute the tissue water and air existing in the flower with the polyvalent alcohol (Abstract). Sakamoto discloses that the polyvalent alcohol is ethylene glycol, glycerol or polyethylene glycol, and the alcohol is methanol, ethanol, butanol, isopropanol or cellosolve (a.k.a., glycol ethers) (Abstract). Sakamoto further discloses the addition of a pigment to the alcohol solution; as well as drying the flower after replacing the tissue water and air with polyhydric alcohol ([0009] and Claims 2 and 3). Sakamoto discloses an example wherein a white rose was soaked in dehydrated ethanol for 6 hours, immersed in a solution of polyethylene glycol, cellosolve, ethanol and pigment for 48 hours, dipped in ethanol for 5 minutes, and finally bleached then dried (Work Example 2).

Response to Arguments

Applicants argue on page 2 that Fuji does not disclose any use of a glycol ether. However, the examiner respectfully argues Cellosolve is a trademark for glycol ethers, with the original Cellosolve, ethyl cellosolve, being ethylene glycol monoethyl ether.

Applicants further argue on pages 2-3 that the instant claims are not obvious, and thus have novelty and an inventive step, as evidenced by the International Search Report. However, the examiner respectfully argues that the patentability of US Patent Applications is considered independently from the International Search Report.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujii (JP 2001-233702 A) in view of Fessenden (US 2,658,836).

Applicant claims:

Applicants claim a finishing agent for producing artificial flowers comprising a lower alcohol, at least one glycol ether, and a dye, wherein an oxidation inhibitor is contained.

Determination of the scope and content of the prior art

(MPEP 2141.01)

The teachings of Fujii are discussed above and incorporated herein by reference.

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Fujii does not explicitly teach the preservation composition to comprise an oxidation inhibitor, as instantly claimed. However, Fessenden teaches a method for preserving biological material, such as flowers and other plant parts (col. 1, ll. 20-22). Fessenden teaches that when preserving plant and animal tissues, the color of which is altered or destroyed by oxidation, stabilization of the natural color requires the use of oxidation inhibitors that are capable of exerting a reducing action strong enough to prevent oxidative color change in the tissues (col. 5, ll. 57-63).

Finding of *prima facie* obviousness

Rational and Motivation (MPEP 2142-43)

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time of the invention to include an oxidation inhibitor into the preservation composition of Fujii in order to prevent oxidative color change in the plants, as reasonably taught by Fessenden.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to Arguments

Applicants argue on page 4 that Fessenden doesn't teach glycol ethers or any features or advantages of the present invention. However, the examiner respectfully argues that Fessenden was only relied upon for the teaching that oxidation inhibitors

are capable of exerting a reducing action strong enough to prevent oxidative color change in plant tissues.

2. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto (JP 2004-099605 A) in view of Fessenden (US 2,658,836).

Applicant claims:

Applicants claim a finishing agent for producing artificial flowers comprising a lower alcohol, at least one glycol ether, and a dye, wherein an oxidation inhibitor is contained.

Determination of the scope and content of the prior art

(MPEP 2141.01)

The teachings of Sakamoto are discussed above and incorporated herein by reference.

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Sakamoto does not explicitly teach the flower preservation composition to comprise an oxidation inhibitor, as instantly claimed. However, Fessenden teaches a method for preserving biological material, such as flowers and other plant parts (col. 1, ll. 20-22). Fessenden teaches that when preserving plant and animal tissues, the color of which is altered or destroyed by oxidation, stabilization of the natural color requires the use of oxidation inhibitors that are capable of exerting a reducing action strong enough to prevent oxidative color change in the tissues (col. 5, ll. 57-63).

Finding of *prima facie* obviousness

Rational and Motivation (MPEP 2142-43)

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time of the invention to include an oxidation inhibitor into the preservation composition of Fujii in order to prevent oxidative color change in the plants, as reasonably taught by Fessenden.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to Arguments

Applicants argue on page 4 that Fessenden doesn't teach glycol ethers or any features or advantages of the present invention. However, the examiner respectfully argues that Fessenden was only relied upon for the teaching that oxidation inhibitors are capable of exerting a reducing action strong enough to prevent oxidative color change in plant tissues.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is (571)272-9924. The examiner can normally be reached on 9:00 AM to 5:30 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWS

/John Pak/
Primary Examiner, Art Unit 1616